

## **REMARKS**

The present Response is being filed under a Certificate of Mailing as indicated. This in response to a Notice of Non-Compliant Amendment sent on November 8, 2007. The claim labels have been changed to represent the status of the claims and the subsequent Remarks are the same as submitted previously. Claims 1-2, 4-9, 11-12, 14-17, 19, 21-24 and 27-31 are pending. Claims 1, 4, 11, 14, and 21 have been amended. Claims 3, 10, 13, 18, 20, 25, 32-40 have been cancelled. Claims 26 and 41 have been withdrawn.

### **Drawings**

Formal drawings are being submitted with this application. No new matter is being added. Pursuant to the Notice of Non-Compliant Amendment mailed on September 5, 2007, the drawings are being resubmitted with the header being modified to add language “replacement sheet”.

### **§101**

Claims 1-20 were rejected under 35 U.S.C. 101 because each of the independent claims – 1, and 11 – positively recited a part of the human body. The claims have been amended per the Examiner’s suggestion. This rejection is now believed to be overcome.

### **§112**

Claims 3, 4, 10, 13, 14, 20, 25, and 32 were rejected for failing to particularly point out and distinctly claim the subject matter. Claims 3, 10, 13, 20, and 25 have now been cancelled. Claims 4 and 14 have been amended to depend from claims 1 and 11, respectively, which both recite that the body comprises a crescent-shaped member. It is the Applicants’ belief that this amendment overcomes this rejection.

### **§102**

Claims 1-25 and 27-40 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Pat. No. 6,267,785 to Masini (“Masini”). Claims 33-40 have been cancelled. Independent claims 1, 11, and 21 all recite a member that extends from the body and is adapted to extend through at least a portion of the long bone and into the medullary canal. Masini does not disclose such a limitation. The set screws 332 of Masini are not adapted to extend *through* at least a portion of the long bone into the medullary canal. Instead, the set screws 332 are designed to *abut* the outside of the bone while cement is being poured into the canal. It is important that the screws 332 do not

extend into the canal, or they would interfere with the cement being poured. Therefore, it is the Applicants' belief that the set screws 332 of Masini do not anticipate the limitation of a member as recited in the present claim.

The Office Action also points to the rod 342 as possibly meeting this claim limitation. However, the rod 342 does not extend from the body – it passes directly through the implant as shown in FIG. 1. Therefore, for at least this reason, independent claims 1, 11, and 21 as well as their dependents are believed to be allowable over Masini.

Claims 1-6, 9-15, 18-25, 27, and 31-40 were rejected as being anticipated by U.S. Pat. No. 6,371,991 to Manasas et al. ("Manasas"). Claims 33-40 have been cancelled. Independent claims 1, 11, and 21 all recite a member that extends from the body and is adapted to extend through at least a portion of the long bone and into the medullary canal. Manasas does not disclose such a limitation. The body 11 of the alignment guide 10 in Manasas is designed to be inserted into the machined bone cavity 21. *See* col. 3, ll. 39-42. There is no disclosure of a member that extends from the body and through at least a portion of the long bone.

Therefore, for at least this reason, independent claims 1, 11, and 21 as well as their dependents are believed to be allowable over Manasas.

Claims 1-9, 11-19, 21-25, 28, 29, 31, and 33-36 were rejected as being anticipated by U.S. Pat. No. 2,765,787 to Pellet ("Pellet"). Pellet is directed to a method and means for treating fractures of the femur. Claims 33-36 have been cancelled. Independent claims 1, 11, 21 each require that the positioning fixture includes a body, the body comprising a crescent-shaped member for at least partially surrounding the long bone. Pellet does not disclose a crescent-shaped member for at least partially surrounding the long bone. Therefore, for at least this reason, claims 1, 11, 21 and their dependents are believed to be allowable over Pellet.

Claims 1, 2, 5-12, 15-24, and 28-40 were rejected as being anticipated by U.S. Pat. No. 5,342,362 to Kenyon et al. ("Kenyon"). Claims 33-40 have been cancelled. As recited above regarding Pellet, independent claims 1, 11, and 21 have been amended to recite a body that comprises a crescent-shaped member for at least partially surrounding a long bone. Kenyon does not disclose such a member. Therefore, for at least this reason, claims 1, 11, 21 and their dependents are believed to be allowable over Kenyon.

### **Conclusion**

For the above-described reasons it is respectfully submitted that the rejections to the claims have been overcome and that all remaining claims, namely claims 1-2, 4-9, 11-12, 14-17, 19, 21-24, 27-31 are currently in condition for allowance. A Notice of Allowance is respectfully requested. It is believed that no fees are due with this response. However, any additional fees associated with the filing of this Response may be charged to Johnson & Johnson Deposit Account No. 10-0750/DEP5108USA/CKT.

Cynthia K. Barnett  
/Cynthia K. Barnett/  
Attorney for Applicants  
Reg. No. 48,655

Johnson & Johnson  
One Johnson & Johnson Plaza  
New Brunswick, NJ 08933-7003  
(574) 372-7332  
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